

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Sylvia Black,

Plaintiff,

v.

17-cv-393-JLS-LGF

Peace Office Christine Vitello, et al.,

Defendants.

DECISION AND ORDER

On May 9, 2017, *pro se* Plaintiff Sylvia Black commenced this action under 42 U.S.C. § 1983. Dkt. 1. On April 13, 2018, this Court referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 11. On August 14, 2017, Plaintiff moved for a pretrial hearing or scheduling conference. Dkt. 8. On August 25, 2017, Defendants responded and cross-moved to dismiss the complaint for lack of personal jurisdiction based upon improper service. Dkt. 9. Plaintiff responded on May 2, 2018. Dkt. 13. Defendants replied on May 31, 2018. Dkt. 14. Plaintiff filed a second response to Defendants' crossmotion on June 12, 2018. Dkt. 15.

On March 18, 2019, Judge Foschio issued a Report and Recommendation ("R&R") finding that Defendants' motion should be granted and that Plaintiff's motion should be dismissed as moot. Dkt. 18. Plaintiff filed objections to the R&R on March 26, 2019 (Dkt. 20), and again on March 28, 2019 (Dkt. 21), both times realleging her substantive complaints, stating that she "served Defendant[s] within

the legal ramifications of the Law” (Dkts. 20 and 21, at 3), and asserting that Defendants “did not ask for a dismissal on the basis of alleged improper service” (Dkts. 20 and 21, at 3). Defendants responded to the objections on April 2, 2019, documenting their requests for dismissal based on lack of personal jurisdiction arising from Plaintiff’s improper service. Dkt. 19. Plaintiff filed a motion for judgment on April 4, 2019 (Dkt. 22), to which Defendants responded on April 16, 2019 (Dkt. 23).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed the R&R, the record in this case, the objection and response, and the materials submitted by the parties. Based on that *de novo* review, the Court accepts and adopts Judge Foschio’s recommendation to grant Defendants’ crossmotion to dismiss and to dismiss Plaintiff’s motion for a hearing as moot. Plaintiff’s motion for judgment (Dkt. 22), which was filed after the R&R was issued and after Plaintiff had twice objected to the R&R, is also dismissed as moot.

For the reasons stated above and in the Report and Recommendation, Defendants’ crossmotion to dismiss (Dkt. 9) is GRANTED and Plaintiff’s motion for a hearing (Dkt. 8) is DISMISSED as moot. Plaintiff’s motion for judgment (Dkt. 22)

is also DISMISSED as moot. The complaint (Dkt. 1) is dismissed; the Clerk of Court is instructed to close this case as dismissed with prejudice.

SO ORDERED.

Dated: April 6, 2020
Buffalo, New York

s/John L. Sinatra, Jr.
JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE